NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service, Inc
Washington, D.C.

Calendar No. 948

101ST CONGRESS
2d Session

SENATE

REPORT
101-511

PROVIDING FOR THE RENEGOTIATION OF CERTAIN LEASES OF THE SENECA NATION, AND FOR OTHER PURPOSES

OCTOBER 8 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

---

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2895]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2895) to provide for the renegotiation of certain leases of the Seneca Nation, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute.

PURPOSE

S. 2895 was introduced by Senator Moynihan (for himself and Senator D'Amato) on July 24, 1990. A companion bill, H.R. 5367, was introduced in the House of Representatives by Representative Amo Houghton of New York on July 25, 1990. On September 13, 1990, the House Committee on Interior and Insular Affairs held a hearing on H.R. 5367. A hearing on S. 2895 was held in the Senate on September 18, 1990. The purpose of these bills is to establish a framework for resolution of issues arising from the fact that some 3,300 leases to land within the City of Salamanca, New York, are due to expire on February 19, 1991. These leases were originally obtained either from the Seneca Nation or from individual members of the Seneca Nation when railroads were built through the Seneca Nation's Allegany Reservation in the mid-1800's.

Despite the fact the leases were found by the courts of New York state to be unlawful and void, and that the rents were extremely low even for that day and age, Congress enacted legislation in 1875

S413-19

ratifying the questionable leases and extending them by 5 years with an option to renew for an additional 12 years; and in 1890, authorized the extension of the leases for 99 years. There were no escalation clauses in the leases and rents have continued for nearly 100 years at sums as low as $1 dollar per lease.

Under the terms of this legislation, the Seneca Nation will offer new 40 year leases to the existing lessees, with an option to renew for an additional 40 years. Unlike the existing fixed term leases, the annual rental of these leases is linked to the appraised value of the land (8% for residential property; 10% for non-residential property). The annual rental income will escalate from the $57,000 per annum now received by the Seneca Nation to $800,000. The legislation also requires payment from the United States of $35 million as compensation for past losses; and payment of $25 million from the State of New York for similar purposes.

A Summary of Major Provisions of the bill; a brief background history of the Seneca/Salamanca lease problem; a review of prior legislation affecting the Seneca Nation leases and discussion of special concerns; and a Section-by-Section analysis of the bill follows:

SUMMARY OF MAJOR PROVISIONS OF S. 2895

The major elements of S. 2895 are as follows:

(1) Under the provisions of section 4, the Seneca Nation is obligated to offer new leases to the existing individual lessees in accordance with an Agreement the Nation has entered into with the City of Salamanca. These new leases shall be for a term of 40 years, with an option to renew for an additional 40 years.

While the Agreement between the Seneca Nation and the City of Salamanca is not specifically ratified and made a part of this Act, the legislation is premised on the Agreement and enactment of S. 2895 will implicitly ratify the Agreement. To understand the bill, it is thus necessary to understand the Agreement.

Under the Agreement between the Nation and the City, the City is responsible for collection of the annual rental from the individual lessees. This is consistent with current practice under existing law. The annual rentals are tied to the appraised value of the land. The annual rental on residential property is to be set at 8% of the appraised value; non-residential property shall pay an annual rent of 10% of the appraised value. Provision is made for periodic reappraisals and for resolution of disputes concerning the leases.

Under the terms of the Agreement, there is a minimum annual rent for the aggregate of the individual leases within the City of Salamanca of $800,000.00. The City agrees to assume payment of this sum. This shall remain the annual rental until such time as the aggregate payment of the individual lessees to the City exceeds this sum, at which time the annual rental will rise accordingly.

(2) Section 6 of S. 2895 sets forth the terms for Federal and state payment of settlement funds. Under the terms of section 6, the United States is obligated to pay to the Seneca Nation the sum of $35 million. The State of New York is obligated to pay the sum of $25 million.

The funds paid by the United States shall be disbursed as follows: $30 million shall be paid to the Nation without restriction or

limitation; $2 million shall be paid into a separate discrete account of the Seneca Nation to be used by the Nation for economic and community development, as determined by the Seneca Nation Council; $3 million shall be paid into a separate "escrow" account controlled by an escrow agent agreed upon by both the City of Salamanca and the Seneca Nation. Under the terms of the Agreement between the City and the Nation, the income from this $3 million escrow account may be used by the City and the Nation for economic and community development. At the expiration of 10 years, the $3 million shall be paid over to the Seneca Nation without restriction.

The Seneca Nation and the State of New York have not yet reached an agreement on the manner or timing of payment by the State. Under the provisions of S. 2895, the State is obligated to make cash payments to the Seneca Nation of $16 million, without limitation as to purpose or use. In addition, the State is obligated to provide $9 million to the Seneca Nation for economic or community development.

The terms and conditions for payment by the State of New York have not yet been agreed upon. Under the provisions of subsection 6(a), the Secretary of the Interior is not authorized to obligate or expend any of the Federal funds appropriated pursuant to this Act until the Seneca Nation and the State of New York have entered into a Memorandum of Understanding pertaining to the payment of the sums due from the State. No provision is made for involvement of the Secretary of the Interior in negotiations between the Nation and the State, nor does the bill provide for any discretion or approval authority of the Secretary over the terms of this memorandum of understanding.

(3) Upon compliance by the United States and the State of New York with the terms of this legislation, the Seneca Nation must execute a release of all claims against the United States, the State of New York, the City of Salamanca, and the congressional villages for payment of annual rental prior to February 19, 1991, the expiration date of the existing leases.

(4) The Secretary of the Interior shall have no future responsibility for review or approval of Seneca Nation leases covered by this Act.

BACKGROUND

The purpose of S. 2895 is to establish a framework for cooperation of a mutually beneficial nature between the Seneca Nation of Indians and the City of Salamanca, New York; to implement an Agreement entered into between the Nation and the City regarding the issuance of new leases by the Nation to the City and individual lessees, as well as leases within three outlying villages within the Allegany Reservation; and to provide the Nation with fair compensation for the use of its land and for the impact on the Nation from prior lease arrangements.

The Seneca Nation is the western-most member tribe of the Iroquois Confederacy, a political confederation whose origins stem from as far back as 1,000 to 1,250 A.D. The Six Nations Confederation included the Seneca, Cayuga, Onondaga, Oneida, Mohawk, and

Tuscarora tribes. The range of influence or activities of the tribes of the Confederacy, prior to the arrival of the Europeans, was vast, extending through Ohio and Pennsylvania and as far south as the Carolinas.

The aboriginal lands of the Seneca Nation, as a part of the Iroquois Confederacy, was centered on what is now western New York State. The November 11, 1794, Treaty of Canandaigua with the Six Nations recognized the right of the Seneca Nation to a portion those lands which included all of the State of New York west of the Genessee River.

By the mid-nineteenth century, through a series of subsequent treaties and agreements with New York State and its successor in interest to the preemptive rights in the land, the Ogden Land Company, the Seneca had lost most of their lands recognized in the Canandaigua treaty. By 1875, the remaining Seneca lands in the State of New York were comprised of three reservation tracts in the southwestern corner of the State. The Allegany Reservation of 30,469 acres, the Cattaraugus Reservation of 21,680 acres, and the Oil Spring Reservation of 640 acres were established by a contract of 1797. These lands were subsequently ceded by a treaty of 1838, but the Seneca refused to move and their right to remain there was restored by the treaty of 1842.

The Seneca Nation adopted a constitution in 1848 that abolished the position of chief and provided for executive, legislative, and judicial branches of government. Enrolled members of the Nation, who are at least 21 years of age, are eligible to vote. The Seneca Nation Tribal Council is made up of 16 members elected biennially, eight each from the Allegany and Cattaraugus Reservations. The Nation's headquarters alternates between the two reservations every two years. The Oil Spring Reservation is uninhabited.

The Allegany Reservation lies along that part of the Alleghany River that hooks into New York. It extends approximately 42 miles along a narrow strip averaging a mile wide on both sides of the river from Vandalia, New York, to the Pennsylvania border. (In 1964, 10,000 acres of the reservation were taken from the Nation for construction of the Kinzua Dam in Pennsylvania.)

In the mid-nineteenth century, the Seneca began leasing rights-of-way through portions of the reservation to several railroads, including the Erie Railroad, without Federal authorization and on terms adverse to the tribe. The railroads were built upon the reservation under authority which the State of New York lacked, but purported to have. Subsequently, white farmers, persons in service occupations for the railroads, and their employees began to occupy tracts of land within the Allegany Reservation. They subsequently leased these reservation lands at very low rentals from the Seneca tribal council or from Senecas who claimed individual possessory rights to such lands in conformity to ancient usages and customs. These leases were also without Federal authorization and on terms adverse to the Nation. Soon, the legality of these leases of Indian lands under authority of state law and lacking Federal sanction began to be called into question. A careful consideration of the validity of there leases under New York authority led state courts to the conclusion that such leases were void as being in violation of Federal restrictions against leasing or alienation of Indian lands.

By 1875, some of the non-Indians had already made sizeable profits by subleasing Indian land; 420 leasing arrangements had been made and the total white investment on the Allegany Reservation had reached $1,359,775. The City of Salamanca and the "congressional villages" were founded, in major part, upon such leases.

The conclusion of the state courts that the non-Indian leases on the Allegany Reservation were void for lack of Federal authorization caused great consternation among the non-Indian lessees and pressure was exerted upon Congress to provide the needed relief. Congress, made aware of the considerable non-Indian settlement of, and great investment in, the Indian lands and at the urging of the state legislature, determined to act.

By the Act of February 19, 1875 (18 Stat. 330), the United States confirmed existing leases of Allegany Reservation lands, authorized further leasing, and, over strong Indian opposition, made the confirmed leases renewable for a twelve-year period. While this Act temporarily allayed the fears of the non-Indian lessees, they still were not secure in their possession after the expiration of the 12 year renewal period.

Continuing pressure was exerted by the lessees through the New York congressional delegation to gain enactment of legislation securing long term security for their possession of these lands. In 1890, Congress enacted the Act of September 30, 1890 (26 Stat. 558), over the strong objection and opposition of the Seneca Nation. This Act amended the 1875 Act by substituting a renewal period of "not exceeding ninety-nine years" for the original 12 year period. The 99-year leases were subsequently executed without Federal supervision, assistance, or support at extremely low rental rates, many as low as $1 per year, with no provision for escalation of rents. Thus began a 100 year period during which the Seneca Nation was deprived of the use of significant portions of its Allegany Reservation (not including the 10,000 acres lost for the Kinzua Dam) with only a token return.

There does not seem to be any disagreement that the rental terms of the current leases are grossly unfair. Some tenants pay as little as $1.00 per year for their land lease. The average annual fee has been reported at $10.00 per lease. For most of the leases, the rental fees have been in effect since new leases were negotiated under the terms of the 1890 Act which authorized the extension for up to 99 years. Aggregate annual rentals totaled about $17,000 per annum for many years, or about $10 per lease. In recent years, as the time for expiration of the original leases drew near, some lessees have chosen to renegotiate their leases and the annual rental income has now increased to about $57,000.

Except for those leases which have been the subject of renegotiation between the Nation and the lessees, the original 99-year leases are due to expire on February 19, 1991. The approaching expiration of these leases has been the occasion of great alarm and concern on the part of the city and residents of Salamanca and among the residents of the congressional villages. While there is a general acceptance among the lessees that they have enjoyed the benefit of a Federally-conferred subsidy of their lease costs at the expense of the Seneca Nation for 99 years, there is no question that a quantum increase in lease payments from that subsidized rate to

the present-day fair market value rate will be a great financial shock to some of the lessees, particularly the elderly. The community surrounding Salamanca, including the Indian community, has been in a state of severe economic decline. This decline is a result of the general economic loss to the northeast sector of the country, to the termination of rail service to and through the area, and in the construction of a major road system bypassing Salamanca.

It is clear that if a major disaster is to be averted for the city of Salamanca and the congressional villages and for their residents, further congressional legislation is needed. S. 2895 ratifies an agreement between the Nation and the City of Salamanca on behalf of the lessees to permit a renewal of the leases at fair market value and provides compensation to the Nation from the United States and the State for the loss of the fair market value of their lands during the last 99 years due to the action of the United States.

SPECIAL CONSIDERATIONS

History of the Seneca/Salamanca lease legislation

The history of legislation regarding the leases of Seneca Nation lands in the Allegany Reservation reflect a clear violation of this Nation's treaty obligations to the Seneca Nation, and place responsibility for the losses sustained by the Seneca Nation at the feet of Congress.

In 1794, at the behest of President George Washington, the United States entered into the Treaty of Canandaigua—a solemn treaty of peace with the six tribes of the Iroquois Nation, including the Senecas, and pledged our Nation's faith to protect these tribes in their rights to their lands until such time as they should choose to sell them. In 1875, over the formal objection of the president, councilors, and people of the Seneca Nation, the Congress of the United States enacted legislation withdrawing from the Seneca Nation the protective umbrella of Federal law; ratifying leases which had been found by the courts of New York to be void and of no effect; and extending those leases for a period of five years, with an option in the lessee to renew the leases for twelve years.

In 1890, with the twelve year period expiring, Congress amended the 1875 Act to authorize renewal for 99 years. The average rent on these leases was $10 per year. Many carried a rent of but one dollar. There was no escalation clause and for the most part these lease terms have continued to this day.

A. Previous legislation

There are five statutes that are relevant to the Seneca/Salamanca lease issue:

The Act of February 19, 1875 (18 Stat. 330) ratified the existing leases for a period not to exceed five years with an option to renew the leases for a period of twelve years.

The Act of September 30, 1890 (26 Stat. 558) amended the 1875 Act by authorizing renewal of the leases "for a term not exceeding 99 years . . . subject to all other terms and conditions of said act." All leases ratified under authority of the Act of 1875 and 1890 expire on February 19, 1991.

The Act of February 28, 1901 (31 Stat. 819), appointed the United States Indian Agent as the person to whom rents should be paid and limited the purposes for which the income could be used. $2,500 was to be paid to the Seneca Nation and the remainder to be distributed per capita to the members of the tribe.

The Act of August 14, 1950 (64 Stat. 442) authorized the City of Salamanca to make rental payments directly to the Seneca Nation on behalf of the lessees. Under New York State law, the City was authorized to collect such rental from the lessees in the form of a tax. Use of the funds by the Seneca Nation continued to be controlled: $5,000 to be paid to the Seneca Nation and the remainder to be distributed per capita to the members of the tribe.

The Act of September 14, 1961 (75 Stat. 499) removed the restrictions on the use of the funds, thus allowing the Seneca Nation to use or distribute the rental income as it saw fit. In addition, the Act authorized the Seneca Nation to grant certain rights-of-way.

The analysis of the history of legislation affecting the Seneca-Salamanca lease issue should start with legislation in the 42nd Congress which was pocket-vetoed by President Ulysses Grant.

B. Analysis of H.R. 2264, 42nd Congress (Vetoed by Pres. Grant)

The efforts to address the Seneca Nation lease issue actually began in 1872 in the 42nd Congress with the introduction by Mr. Sessions of H.R. 2264, to authorize the Cattaraugus and Allegany Indians of New York to lease lands and confirm leases. The bill, as passed by the House, was a straight forward lease authorization that rested fully on the consent of the Seneca Nation. As passed by the House, the bill authorized the Cattaraugus and Allegany Indians ". . . by a resolution of their council, according to their system of government . . ." to lease their lands for village lots in the villages of Salamanca, Great Valley and Carrollton "and all leases heretofore made by said Indians in council, as aforesaid, are hereby confirmed." Additional sections authorized tribal land assignments to tribal members and provided for sale and disposition of personal property and standing to sue in New York courts. (See Cong. Rec., May 1, 1872, pg. 2944).

When the bill was brought to the Senate floor, it was radically altered. Upon recommendation of the Senate Committee on Indian Affairs, the lease and land assignment sections were deleted in their entirety. In their place, the bill recommended by the Committee and passed by the Senate authorized the President to negotiate with the Seneca Indians for an outright cession of 15,000 acres of the easterly portion of the Allegany Reservation. The occupants of the land were to have a first right of purchase at the appraised value, otherwise such lands to be sold at public auction for not less than the appraised value.

From the proceeds of sale, the United States would buy out the owner of the preemptive right of purchase (i.e., the Ogden Land Company which had acquired the right of preemption from Massachusetts) at a sum not to exceed $5 per acre, then distribute the remainder of the funds to the Seneca Indians on a per capita basis. In other words, the Senecas themselves would have to buy out the owner of the preemptive right of purchase. The amended bill was

passed by the Senate without debate. (See Cong. Rec., June 6, 1872, pg. 4284).

The House rejected the bill as amended by the Senate and insisted on a conference. As reported out of conference, the Senate language remained intact, but, at the insistence of the House, a new section one was added to the bill. The language, for the first time, provided for time limits on the leases. It also provided for periodic adjustments in the rental, and it provided that the rents would be collected by the Indian agent in charge.

> Sec. 1.—That the Cattaraugus and Alleghany Indians . . . are, hereby, authorized by a resolution of their council, according to their system of government, to lease any of their lands on said reservations for village or town lots . . . ; said leases to be for a term of not more than twelve years, subject to renewal from time to time for a period not longer than twelve years, with a readjustment of the rates of rent, the said rents to be paid annually to the United States Indian agent for said Indians, and distributed by him per capita among said Indians, and accounted for under such regulations as the Secretary of the Interior may prescribe; and all leases heretofore made by said Indians in council, or by individual Indians, for the purposes aforesaid, are hereby confirmed for the unexpired period of said leases, not exceeding six years from the passage of this act, and subject to renewal as in the case of new leases hereinbefore provided for . . . (Cong. Rec., February 21, 1873, pg. 1563–64).

The section further provided that the Indian Agency should have authority to bring an appropriate action in any court of competent jurisdiction to collect such rents.

This bill, as amended, was concurred in by both Houses without debate. The bill was pocket vetoed by President Grant without comment or message.

C. Act of February 19, 1875 (18 Stat. 330)

The bill that led to this Act originated on the House side (H.R. 3080). The legislative history of this legislation does not indicate that the Department of the Interior ever took a position or was asked for a position on this bill. However, in testimony before the Select Committee, Laurence M. Hauptman, Professor of History at State University of New York, College at New Paltz, who has written extensive histories on this issue, testified that the local Indian agent did, in fact, support the legislation. (See Chapter 7, Iroquois Land Claims, Syracuse University Press, edited by Vecsey and Starna, 1988). The bill (H.R. 3080, improperly designated as H.R. 3280) is printed in full in the Congressional Record for May 4, 1874, when the bill was passed by the House of Representatives under a suspension of rules and without debate. (Cong. Rec., May 4, 1874, p. 3581, 43rd Cong., 1st Sess.).

As passed by the House, H.R. 3080, for purposes of the leasing Act, would have statutorily decreed all Indians residing within the Cattaraugus and Allegany reservations in the State of New York to "be considered and treated as belonging to, and included in, the

Seneca Nation of New York Indians." In addition, the bill placed no time limit at all on the length of time for which a lease could be granted. The right of individual Indians to enter into leases and the lack of any time limit on leases were among the major points of debate on the Senate floor.

When H.R. 3080 was brought before the Senate on February 2, 1875, it was the subject of a vigorous and heated debate between the proponents of the bill and those who were concerned for the protection of the Indians. (See Congressional Record, Feb. 2, 1875, pages 908 through 920). The Seneca Nation filed with the Senate a vehement "Protest" against the legislation. That Protest was printed as Senate Miscellaneous Document No. 122 and is set forth in full, as follows:

[43d Con., 1st Sess., Mis. Doc. No. 122]

PROTEST OF THE PRESIDENT, COUNCILORS, AND PEOPLE OF THE SENECA NATION OF INDIANS, MADE IN THEIR NATIONAL COUNCIL, AGAINST THE PASSAGE OF THE BILL (H.R. No. 3080) TO AUTHORIZE THE SENECA NATION TO LEASE THEIR LANDS WITHIN THE CATTARAUGUS AND ALLEGANY RESERVATIONS, AND TO CONFIRM EXISTING LEASES

JUNE 8, 1874.—Referred to the Committee on Indian Affairs and ordered to be printed

To the Senate of the United States:

We, the president, councilors, and people of the Seneca Nation of Indians, do most respectfully and earnestly protest against the passage of House bill No. 3080, "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," now pending before your honorable body. And we appeal to the treaties existing between the United States of America and the Senecas, and insist that under their terms we should be protected against any legislation which deprives us of any part of the lands so guaranteed to us. And we would further state, as to the existing leases referred to, in said House bill No. 3080, they never had any validity, and it was so understood by all parties to them when they were executed; all leases of Indian lands were prohibited by the laws of the State of New York, (see laws 1813, 1821, and 1845;) and these leases were made void in law and equity by the United States laws for 1834, sections 11 and 12; and more, such leases were prohibited by the laws, customs, and usages of the Seneca tribe and Nation; an it was so distinctly understood, by the parties who applied to the counselors of the Nation to ratify them, that the councilors had no such power or authority; yet this bill proposes to make valid, not only those acts forbidden by the statutes of the United States, but also forbidden by the laws of the State of New York, and in violation of the rights, customs, laws, and usages of the Seneca Nation who own the land so effected, and by so doing force upon this Nation these void, forbidden, and worthless leases, and compel them to carry them into effect, and to that extent deprive said Nation of their lands, in violation of treaty stipulations.

And your petitioners would further state, as to the powers conferred in said House bill No. 3080, in relation to leases hereafter to be made, that the Seneca Nation holds all of said lands in tribal or national capacity; that their lands have not been allotted or divided; all the right any individual Indian has therein is confined to possession; that to confer the right of leasing upon individuals would work injustice among our people. That such an act would compel Indians to go into the courts of the United States, or of the State of New York, to obtain possession of their lands if a white man disputed it, as those tribunals would have sole jurisdiction to try all questions of right to your petitioners' land, and thus our courts would be legislated out of jurisdiction to try actions concerning the possession of their own lands.

Given in national council at the court house on the Cattaraugus reservation, June 3, 1874.

WILLIAM NEPHEW, *President.*

Names of the councilors, Seneca Nation of Indians.

George Dennis.	John Jack.
William Krouse.	Henry Hufftur.
Isaac Halftoun.	Andrew John, Jr.
Wallace Halftown.	Adam Pierce.
Peter Snow.	Hiram Dennis.
Casler Redeye.	Joseph Jemerson.
Peter Sundown.	Samuel Jemerson.
William Redeye.	

CEPHAS TWO GUNS,
Clerk for the Seneca Nation of Indians.

This Protest played a significant role in the debate, but even after a second reading of the Protest, it was characterized by one of the proponents of the bill as a protest from individuals—not the Seneca Council.

A number of questions were raised in the debate and amendments were offered on the Senate floor to provide protections, but these were systematically voted down. An amendment was offered to strike from the bill the following protective language—

> Provided, nevertheless, That this act shall not be construed to ratify or confirm leases which according to the laws or customs of said Seneca Nation are invalid.

The amendment was adopted by a narrow vote and this protective language was deleted from the bill.

An amendment was offered to require the review and approval of the leases by the Secretary of the Interior, as follows—

> Provided, however, That all leases now made or hereafter to be made pursuant to this act shall be subject for their validity to the approval of the Secretary of the Interior.

The amendment was rejected.

In the course of the debate a question was raised whether the bill contained any requirement for an escalation clause in the leases. The answer was that it did not, but inclusion of such a provision should be left to the contracting parties.

Further in the debate it was stated by Senator Thurman of Ohio, an opponent of the bill, that if the bill became law it would authorize any Indian having possession of a parcel of land to lease it for "99 years, renewable forever; in other words, grant an inalienable fee . . . ". (pg. 915). A suggestion was made that he offer an amendment to place a time limit on the leases. The 99-year-lease term was eventually deleted, apparently at conference on the bill.

As finally enacted the Act of February 19, 1875, ratified all existing leases, whether granted by the Seneca Nation or individual members, and made them binding upon the parties and the Seneca Nation for a period of five years subject to a right of renewal for an additional period of twelve years.

D. Act of September 30, 1890 (26 Stat. 558)

This Act amended the Act of 1875 to provide that except for leases to railroads, leases covered under the Act of 1875 shall be renewable for a term not exceeding ninety-nine years instead of the term of twelve years.

The Senate Report on the bill does not reflect that the views of the Department of the Interior were requested or obtained. There was almost no discussion of the bill at the time of passage by the Senate. (See Congressional Record, September 16, 1890, pg. 10075). On the House side the bill was adopted with nearly the same paucity of discussion, except for one inquiry from a Member who asked whether the bill made any provision for periodic readjustment of the lease terms. The reply, as before, was that that could be provided by the terms of the lease. (See Congressional Record, September 26, 1890, pg. 10493).

The Senate bill was accepted without amendment.

E. The acts of 1901, 1950 and 1961

These Acts were briefly summarized in Part A above. The Act of 1901 provided that rental payments should be made to an Indian Agent assigned to the Seneca Nation; that the first $2,500 collected should be paid to the Nation, and the remainder distributed per capita to the members of the tribe.

The Act of 1950 authorized the City of Salamanca to collect the rents and make payment directly to the Seneca Nation, the first $5,000 to paid to the Nation and the remainder distributed per capita to the members of the tribe. The Act of 1961 removed the requirement that the funds be distributed per capita.

The 1950 Act, went to substantial lengths to assure the Seneca Nation that nothing in the Act would affect its ownership of the underlying title to these lands and the expiration date of February 19, 1991. This was done through adoption of amendments while the bill was in Committee. (See Report of the Senate Committee on Interior and Insular Affairs to accompany H.R. 4942, 81st Congress, 2d Session.)

Use and distribution of funds

In hearings before this Committee and the House Interior and Insular Affairs on this legislation, concern was expressed by Committee members that no provision was contained in the legislation to govern the use and distribution of the $30 million to be paid by

the United States to the Seneca Nation. Since at least 1973 when Congress enacted the Indian Judgment Fund Distribution Act (Act of October 19, 1973; 87 Stat. 466; 25 U.S.C. 1401), the policy of Congress has been to discourage per capita distribution of funds awarded Indian tribes. The history of per capita distributions is grim, commonly reflecting a short term benefit at best for the individual distributee, and resulting in the loss of a tribal asset that can provide long term, if not perpetural, benefits to a tribe and its members.

These concerns were expressed by members of both the Select Committee and the House Interior Committee. In response to these concerns, the witnesses for the Seneca Nation advised the Committees that the Nation had already developed the outlines of their plan for the use and distribution of the funds the Nation would receive under this Act, and that while the Nation was considering a "modest" per capita distribution not to exceed $2,000 per person, the vast majority of the funds would be used for tribal programs and economic development projects.

The Committee is cognizant of the fact that the Seneca Nation has operated under a constitutional form of government since at least 1848; that it currently has in place a sophisticated mechanism to govern its budgeting and management of funds, including annual audits; and that to this day the Nation has held intact funds paid to the Nation for the taking of their lands for the Kinzua Dam project.

The President of the Seneca Nation, Dennis Lay, provided the Committee with the following Supplemental Statement explaining the Nation's budget and management process and the Nation's plans for the use of these funds.

SUPPLEMENTAL STATEMENT OF DENNIS LAY, PRESIDENT, SENECA NATION

Several Congressmen have requested further details concerning the Nation's budget process and its planned use and management of the Salamanca settlement funds. In this supplemental statement, we provide further information on both of these issues.

A. BUDGET PROCESS

The Seneca Nation of Indians has been managing all the Nation's funds at least since 1848, the year in which the Nation adopted its Constitution.

The Constitution contains specific requirements which provide the framework for the budget process. First, the affirmative vote of 10 of the Nation's 16 member Tribal Council is required for all appropriations of Nation monies. Second, the Constitution itself requires a balanced budget. These requirements are contained in Section II, which provides:

> In all appropriations of public money an affirmative vote of at least ten of the whole number elected shall be necessary. It shall not be lawful for the Council to make appropriations of public

> money in any one year exceeding the sum of the aggregate revenue of that year; but the Council shall make appropriation of public money to carry on the government in extraordinary cases for the welfare of the Nation.

Today, the management of Nation funds pursuant to Section II is accomplished through a sophisticated, fully computerized, process in which both the legislative and executive branches of the Nation's government—as well as independent advisors where appropriate—are intensely involved.

The results of this process are the best evidence of its success. For the past seven years—the period for which all Nation records are retained—the Nation's budget has been balanced. Moreover, the Nation's annual audit, performed by independent auditors, has confirmed that the monies appropriated in the budget were expended for the purposes for which these funds were appropriated.

The Nation's budget is prepared annually. The budget process includes the preparation of budget estimates, budget justifications, and hearings before the Tribal Council on the proposed budget. These hearings provide an opportunity for the Council to both consider the needs of each program which expends Nation funds, and to examine the progress which each program has made towards achieving the Nation's objectives. The Council then allocates available funds for the specific purposes for which justification has been shown, and enacts the budget by resolution.

As part of this process, the Nation also examines each revenue source to determine what conservative revenues estimates may be employed for budget purposes. As with many Indian tribes, bingo is a primary—although not exclusive—source of Nation revenues. Retail automotive fuel and cigarette enterprises also contribute to the Nation's budget, as does a campground located on the Nation's Allegany Reservation. The review process also examines the performance of the Nation's investments, which include funds held and administered by the Nation's Community Building Development Board, which manages the fund which is used to maintain and repair Nation buildings, and the Nation's funds on deposit with the Bureau of Indian Affairs.

Once the budget is enacted, the Nation's Treasurer (one of the Nation's three elected executive offices), and the Nation's Controller are responsible for insuring that the funds appropriated in the budget are spent for the purposes for which they are appropriated. Any reallocation of appropriated funds requires that approval of the Council by resolution. The process of managing and overseeing the budget includes quarterly budget reviews, as well as monthly budget reports. These reports are presented at regular meetings of the Council, which are open to the

membership. The Nation's annual audit, performed by an independent accounting firm, provides a further check on the Nation's financial management system.

B. PLANNED USE AND MANAGEMENT OF SETTLEMENT FUNDS

The Control, investment, and expenditure of the funds provided for under the Seneca Nation Settlement Act of 1990 has been the subject of extensive discussion by Nation officials and the Nation public, although these discussions are, of course, tempered by recognition that receipt of these funds depends upon the passage of the Act.

The Nation recognizes that the settlement presents an opportunity for generations of Nation members to benefit from its terms, and that long term investment of the great majority of the settlement funds is essential to fulfilling this objective. This principle is grounded in the Iroquois tradition of planning today for the needs of the seventh generation in the future. This principle was successfully implemented by the Nation in planning for the expenditure of the funds received by the Nation for the Kinzua Dam settlement. Many of the Nation's present leaders received educational assistance paid for with the Kinzua funds, and many of the buildings which now house the Nation's programs and offices were built with those funds. (The allocation of the Kinzua funds also included a per capita payment.)

The Nation has preliminarily identified the kind of investment opportunities best suited to stability and long term growth. It anticipates placement of the great majority of the Salamanca monies in a broadly diversified investment fund, specialized in holding funds for the long term benefit of the investor. The security of the fund, its rate of return (with an emphasis on long term performance), and the cost of fund management are factors on which the Nation will focus in selecting an investment fund. Specific investment funds suited to these purposes have been identified. The Nation has also considered the use of these funds to make capital investments important to the long-term growth of the Nation.

The Nation has discussed expending interst earned on the invested funds to further specific long term objectives for the Nation and its members. Many of these objectives were identified through the budget process, and others have emerged through specific consultations with the Nation's program directors and agency heads and at public meetings. The following long term needs of the Nation have been identified (1) providing care for the elderly, many of whom now live off the Reservation because there is no residential care facility available on-Reservation; (2) funding for the education and youth programs for the Nation's youth, on whom the future of the Nation rests; (3) economic development and job creation, essential to address an unemployment rate of over 40%; (4) environmen-

tal programs to protect the Nation's land, waters, and air; (5) land acquisition, which is necessary to address a critical land shortage which now forces many Nation members to live off the reservations; and (6) substance abuse, an area in which community interest and activism is great and the needs are immediate. The Nation would allocate interest from the investment funds for these purposes using the budget process described above.

At the same time the Nation recognizes the desirability of a modest per capita payment, not to exceed $2000. This need arises from the history of the leases themselves. Over the past 115 years, the Nation has received rental payment for the leases which have been grossly inadequate. Nation members alive today have suffered as a result of this injustice. For our children, the Nation will establish trust funds which both protect these monies, and insure their growth until the beneficiary reaches the age of majority.

In sum, the Nation looks to the future with confidence that the Salamanca lease settlement will achieve its intended purpose, and that the seventh generation will benefit from it just as all those who are here with us now.

In light of this Statement, in lieu of requiring that the Nation submit to the Congress a plan for the use and distribution of these funds, the Committee amended section 6(b)(1) to provide that the funds paid the Nation under this Act would be managed, invested, and used by the Nation to further the specific objectives of the Nation and its members, in accordance with the constitution and laws of the Nation. The Committee expects that the Nation will develop its final plans in accordance with the testimony of the Seneca Nation witnesses and the Supplemental Statement provided by President Lay.

Reversionary interests and Seneca Nation title to leased lands

A question has been raised with respect to the reversionary interests in leases that were originally obtained from individual members of the Seneca Nation. It is the opinion of the Committee that underlying title to these leased lands lies in the Seneca Nation, and that there is no reversionary use interest in these lands other than that that is recognized under the laws of the Seneca Nation and the Nation's form of government.

This conclusion is based on the Protest of the Nation filed with the Senate in 1875; the language of section 3 of the Act of 1875 stating that at the end of the lease period ". . . said Nation through its councilors shall be entitled to the possession of the said lands, and shall have the power to lease the same"; the language in the Act of 1950 assuring the Nation of title in the lands; and the fact that throughout the years, lease payments have been made to the Seneca Nation and not to the original lessors or their descendants.

Agreement between the Seneca Nation and the city of Salamanca

The purpose of this legislation as stated in section 2(b) is to effectuate and support the Agreement between the Seneca Nation and

the city of Salamanca. This legislation rests upon and implicitly ratifies the provisions of this Agreement. Three documents accompany the Agreement: Document One, setting forth a list of persons holding 50-year leases to whom new leases will be offered; Document Two which is the lease that will be offered to the new leasees; and Document Three which provides for a Joint Leasing Committee. The Agreement and Document Three establishing the Joint Leasing Commission follows:

AGREEMENT BETWEEN THE SENECA NATION OF INDIANS AND THE CITY OF SALAMANCA

I. PURPOSE AND SCOPE OF AGREEMENT; HISTORICAL BACKGROUND; PARTIES

A. Purpose and scope

This Agreement establishes a framework for cooperation and a mutually beneficial future for the Seneca Nation of Indians, Nation members, the City of Salamanca and City residents. The Agreement: (1) provides City residents with new leases of Nation land; and (2) provides the Nation with fair compensation for the use of its land and for the impacts on the Nation of the prior lease arrangement.

B. Historical background

The Agreement is rooted in an appreciation of the heavy toll paid by the Nation in the historical development of the City of Salamanca. The parties are aware of the unique sequence of events which deprived the Nation of the use of its lands. In the mid-nineteenth century, several railroads, without Federal authorizaiton or approval and on terms adverse to the Nation secured rights-of-way through the Allegany Reservation. The railroads were built on the Allegany Reservation under authority which the State of New York lacked but purported to grant. Subsequently, railroad employees, persons associated with the railroads, city residents and non-Indian farmers obtained leases of Allegany Reservation lands, also without Federal authorization and, similarly, on terms adverse to the Nation. By 1875, Congress, aware of the considerable non-Indian settlement of and investment in Nation land and at the urging of the State, determined to act. By the Act of February 19, 1875 (18 Stat. 330), the United States confirmed existing leases of Allegany Reservation lands, authorized further leasing and, over Indian opposition, made the confirmed leases renewable for a twelve-year period. Fifteen years later Congress dealt the Nation yet another blow. The Act of September 30, 1890 (26 Stat. 558), also enacted over Indian opposition, amended the 1875 Act by substituting a renewal term of "not exceeding ninety-nine years" for the original renewal term of twelve years. The leases were subsequently executed without federal supervision, assistance, or support. Rentals were for a fixed sum, with no escalation. Thus, the Nation has now been deprived of its lands for well over one hundred years, yet has received extremely inadequate rental payments and, in many cases, no payments at all.

The leases confirmed and authorized by these acts of Congress and upon which the City of Salamanca was founded are now due to expire on February 19, 1991. Understandably, this approaching expiration date is creating considerable anxiety and uncertainty on the part of City residents. Mindful of these justifiable concerns on the part of City residents, as well as the injustices suffered by the Nation and its members, the parties have negotiated this Agreement to compensate the Nation fairly for the use of Nation lands, to provide a measure of certainty and security to the City and City residents, and to establish a framework for future cooperation and economic advancement.

C. Parties

The following are parties to this Agreement:

1. the Seneca Nation of Indians
2. the City of Salamanca

II. NEW LEASES

A. Nation's commitment to provide new leases

The Nation agrees to provide new leases to any person holding a lease with the Seneca Nation which either expires on February 19, 1991 or is among the leases listed in Document 1 of the Technical Documents. After a leased property becomes the subject of a new executed lease, the old lease shall be treated as surrendered. The tender of the new leases, the surrender of the old leases, and the exercise of the option to renew the new leases, all as provided for under this Section, shall be subject to the terms of Section VII of this Agreement.

B. Lease terms

1. The new leases will be for a term of 40 years from February 19, 1991. The Nation shall tender the new leases to any person holding a lease with the Seneca Nation which either expires on February 19, 1991 or is among the leases listed in Document 1 of the Technical Documents within sixty days of ratification of this Agreement by the Nation and the City, provided that the new leases so tendered shall not be binding on the Nation until the steps set forth in Section VI.D. of this Agreement have been accomplished. The leases shall become binding on the same basis as the Agreement is to become effective under Section VI.D. The option to accept the offer of a new lease shall expire on February 19, 1991 unless extended by the Nation.

2. Lessees will have the option to renew the new leases for a period of 40 years, provided that the lessee is not in default at that time. The lessee may exercise the option to renew the lease by giving notice to the Nation.

3. The annual rental payment due for the new leases will be $800,000 until this amount is less than the sum of 8% of the land value of the property leased for residential purposes and 10% of the land value of the property leased for non-residential purpose (the "formula"), at which time the amount determined by application of this formula shall become the annual rental payment. The annual rental payment determined by application of this formula

shall be adjusted annually by the same percentage at which the full value of property in the City changes, as shown by the Equalization Rate. If the Equalization Rate (or a successor or substitute index similarly adjusted) is not available, the parties shall agree upon the use of a different methodology for determining the rate of change in property values in the City. The parties also agree that the property in the City will be the subject of an objective reappraisal to determine the land value of the leased property, to be completed by the end of the fifth year of the initial forty year term of the leases provided for under this Agreement. The reappraisal of the land value of the leased property shall be conducted by an appraiser retained specifically for this purpose, who is acceptable to both the Nation and City, and shall be conducted on terms acceptable to both the Nation and the City. The cost of the reappraisal shall be shared equally by the City and the Nation. The land value as determined by the objective reappraisal conducted under this Section shall become the land value for purposes of calculating the annual rental payment which the lessees collectively will pay under this Agreement.

4. The Nation may, at its option at the end of any five year period of this Agreement: (1) upon satisfactory demonstration to the Joint Leasing Commission that the values used are not representative of market values, initiate an objective reappraisal to determine the land value of the leased property, to be conducted in accordance with Section II.B.3. of this Agreement, or (2) test the methodology used to determine the Equalization Rate through the use of a random sample selection of parcels in accordance with the procedures set forth by the State Board of Equalization and Assessment for such testing. The land value as determined by objective reappraisals conducted under this Section shall become the land values for purposes of calculating the annual rental payment determined by application of the formula set forth under Section II.B.3. of this Agreement. The Equalization Rate as determined by the testing procedures set forth under this paragraph shall become the Equalization Rate used for purposes of determining the annual adjustment in the annual rental payment as provided for under Section II.B.3. of this Agreement.

5. The annual rental payment due the Nation will be apportioned between the lessees and the City and paid according to the following formula: The lessees collectively will pay the sum of 8% of the land value of property leased for residential purposes and 10% of the land value of property leased for non-residential properties; the City will pay the difference between this amount and $800,000 until the amount paid by the lessees' collectively exceeds $800,000. The rents described in this Agreement shall be the total consideration due from the lessees for the occupancy of the leased lands.

6. Lessees shall agree as provided in Technical Document 2 to tender their annual rental payments to the City, as authorized under federal law by the Act of August 14, 1950, 64 Stat. 442 and in accordance with Chapter 878 of the laws of the State of New York for the year 1953. The City agrees to tender the annual rental payment to the Nation by check payable to the Nation. Notwithstanding the failure of any lessee to pay to the City the amount

owed by that lessee, the City agrees to pay the Nation the lessees' collective share of the annual rental payment by tendering full payment to the Nation on or before the date the rent is due and payable.

7. Where any person holding a lease with the Seneca Nation which either expires on February 19, 1991 or is among the leases listed in Document 1 of the Technical Documents does not accept the new lease tendered by the Nation under Section II.B.1. of this Agreement the annual rental payment due from the City to the Nation under Section II.B.3. of this Agreement shall be ratably reduced. The amount of the reduction shall be the amount that would have been due if the new lease had been accepted.

8. Where a member of the Seneca Nation would be entitled to a new lease under this Agreement, the entitlement thereto is hereby modified to the extent that whether or not the Nation shall execute and deliver such new lease to such member of the Seneca Nation shall be determined by the Nation alone. Where no lease is executed pursuant to this Agreement the City shall not be obligated to pay rent to the Nation for that parcel.

9. Where the Seneca Nation or a member of the Seneca Nation acquires the interest of a lessee in a parcel held under a new lease tendered by the Nation under Section II.B.1 of this Agreement, and is not obligated to and elects not to hold the parcel under the new lease, the annual rental payment due from the City to the Nation under Section II.B.3. of this Agreement shall be ratably reduced. The amount of the reduction shall be the amount that would have been due if the parcel were held under the new lease.

10. Additional lease terms are set forth in Document 2 of the Technical Documents.

III. AUTHORITY TO INVESTIGATE COMPLIANCE WITH LEASE TERMS AND THIS AGREEMENT

The parties agree that the Council of the Seneca Nation and any person or persons designated by the Council will have the authority to investigate whether the City and the lessees are in compliance with the lease terms and any provisions in this Agreement relating to lease terms and lease administration. When, in the judgment of the Council or its designees such action is warranted, the Council may file a complaint under Section IV of this Agreement initiating a binding arbitration on whether there has been a breach of any lease term or provision of this Agreement relating to lease terms or lease administration. In carrying out its responsibilities under this section, the Council or its designees shall have the authority to gather and compile information in all practicable ways, including but not limited to the power to take testimony of witnesses under oath; to issue subpoenas to compel attendance of witnesses or the production of books, records, documents and other evidence. The Council may as part of its investigation prepare reports and recommendations which may be transmitted to the Comission established under section IV.

IV. JOINT LEASING COMMISSION AND DISPUTE RESOLUTION PROCESS

The parties agree to the establishment of (1) a commission which shall be known as the Seneca Nation—City of Salamanca Joint Leasing Commission, and (2) a dispute resolution process for resolving disputes arising under the lease terms and provisions of this Agreement relating to lease terms and lease administration. The composition, powers, and duties of the Commission and the dispute resolution procedures are set forth in Document 3 of the Technical Documents. The objectives of the Commission and the dispute resolution procedures are to ensure that the lessees, the City and the Nation comply with the lease terms and with any provisions in this Agreement relating to lease terms and lease administration.

A. Commission responsibilities

Among its other duties, the Commission is authorized and directed to:

1. Compute the annual rental payment due for the new leases in accordance with Section II.B.3. of the Agreement (hereafter the "annual rental payment") and to apportion the annual rental payment between the lessees collectively and the City of Salamanca in accordance with Section II.B.5. of the Agreement. The City shall make available to the Commission by December 1 of each year all records, figures, and dates within its possession to make the required computation.

2. Notify the City annually by December 15 of each year of the share of the annual rental payment collectively owed by the lessees, and of the share of the annual rental payment owed by the City in accordance with Section II.B.5 of the Agreement. The amounts so determined and provided to the City shall be certified to the City by the Commission, and unless disputed by the City within 10 days, shall constitute the annual rental payment and the apportionment thereof between the lessees collectively and the City.

3. Verify and confirm annually the amount of the annual rental payment which each indiviudal lessee will pay pursuant to the procedures used by the City to determine said amount, which procedures shall be provided to the Commission at least 60 days before February 19 of each year. The Commission shall certify such amounts to the City, and the City shall than proceed to notify the lessees individually and to collect said amounts from the lessees individually under procedures approved by the Commission.

4. Perform other administrative tasks necessary for administration of the leases, provided that the Commission shall have no authority to exempt any lessee from his or her share of the annual rental payment.

B. Initiation of arbitration

The City, the Nation, or any lessee or sublessee who believes that any other of these parties has failed to comply fully with any lease term or any provision in this Agreement relating to lease terms or lease administration may file a complaint with the Commission initiating arbitration under this Section of the Agreement and pursuant to the procedures set forth in Document 3 of the Technical Doc-

uments. However, in any year in which the Nation timely receives from the City the total amount owed by the lessees as their collective annual rental payment, the Nation will have no recourse against individual lessees for failure to make rental payments and the City will have the exclusive right to seek redress from the defaulting lessees for failure to make rental payments. The Nation's right to seek redress against lessees for breach of provisions other than those relating to tender of payment is reserved and will be unaffected by timely payment of such collective annual rental. If, however, the City does not pay the lessees' collective share of the annual rental payment on or before the date it is due, then the Nation may seek redress against the City, the lessees, or both.

V. ADDITIONAL TERMS

A. Electric utililty service

The City agrees to provide City electric utility service to Nation members and Nation buildings and facilities in Jimersontown on the Allegany Reservation at the same rates applicable within the community of Killbuck, or at a similarly reduced rate if the rate in effect in Killbuck as of the date of execution of this Agreement is eliminated, provided that in no event shall the rate be greater than that charged by the City to consumers outside the City, provided that the Jimmersontown area is first determined to be eligible for service by the City's Electric Utililty ("Utility") under applicable law, and further provided that the Nation shall make available the poles, lines, and transformers (if necessary) (hereinafter "equipment") needed for the Utility to deliver service to this area, which equipment the Utility shall maintain as part of the service provided and at no cost to the Nation. The Nation and the City agree to jointly take such action as may be needed to establish the eligibility of the Jimersontown area for City electric utility service.

B. West end properties

The City agrees to take all action which it is empowered to take, including if requested by the Nation seeking an amendment to the City charter from the legislature of the State of New York, to exclude the Nation properties shown on Schedule A, which may be subject to confirmation by survey, from the boundaries of the City, but shall continue to provide City electric, water, and sewer utility service to these properties at the same rates, as to electric utility service, applicable within the community of Killbuck, or at a similarly reduced rate if the rate in effect in Killbuck as of the date of execution of this Agreement is eliminated, provided that in no event shall the rate be greater than that charged by the City to consumers outside the City, provided that the Nation shall provide the City with the access and easements necessary for the City to continue to provide such service.

C. Salamanca Hospital district authority lease

The Nation agrees to provide a new lease with a term and annual rental as set forth in Section II. of this Agreement to the Salamanca Hospital District Authority, provided that this lease shall remain in effect only as long as the premises are used as the

site of a community hospital or for directly related purposes, which shall include use as a health care center. The Nation and the City agree to (1) work cooperatively to maintain the property under lease to the Salamanca Hospital District Authority as the site of a community hospital or for directly related purposes, which shall include use as a health care center, and (2) that in the event the property is no longer used as the site of a community hospital or for directly related purposes, which shall include use as a health care center, the further use of the property shall be a matter of lease administration and subject to a plan for its use and development which has been agreed upon by the Nation, and the City, and pursuant to a lease provided in accordance with Section II. of this Agreement on which the term shall be considered to have begun on February 20, 1991.

D. Economic development

The sum of $3,000,000 from the Economic and Community Development Fund provided for under Section VI.C.1.b. of this Agreement shall be deposited in an escrow account which shall be owned by the Nation. The escrow agent shall be selected by agreement of the Seneca Nation and the City. The escrow account shall remain in existence for a period of ten years from the date on which the principal is deposited, or until all payments provided for under this Section V.D. have been made. The escrow account shall be held and disbursed by said escrow agent as follows.

1. Two-thirds of the income accruing to the escrow account each year shall be paid to the City for economic and community development in the City.

2. One-third of the income accruing to the escrow account each year shall be paid to the Joint Venture Commission on Economic Development.

3. After ten annual disbursements of the income accruing to the escrow account have been made in accordance with this Section V.D., the principal of the account shall be paid to the Seneca Nation to be used for such purposes as the Seneca Nation may authorize.

VI. IMPLEMENTATION AND MODIFICATION

A. Structure of agreement

This Agreement consists of this document entitled "Agreement" and several separate documents contained in a technical appendix:

1. Document 1: Listing of leases, other than those expiring in 1991, which the Nation agrees to replace with new leases in accordance with this Agreement.

2. Document 2: Lease terms to be incorporated into all leases entered into pursuant to this Agreement.

3. Document 3: Seneca Nation—City of Salamanca Joint Leasing Commission.

Each of these three documents forms an integral part of the Agreement.

B. Ratification by nation, and city

The Council of the Seneca Nation, on behalf of the Seneca Nation of Indians and the Council of the City of Salamanca, must ratify this Agreement no later than July 14, 1990. Upon ratification, the parties shall convene to develop a plan for implementing the Agreement at the earliest possible date.

C. Federal and State participation

1. In order to become effective, this Agreement requires that certain actions be taken by the United States Congress. These actions include but are not limited to:

a. Authorizing and appropriating $30,000,000 for the Federal share of the cash payment to the Nation.

b. Authorizing and appropriating $5,000,000 for the Economic Development Fund established for the Nation.

2. In order to become effective, this Agreement requires that certain actions be taken by the legislature of the State of New York, or be subject to an agreement between the Nation and the State which shall have the effect described in Section VI.D.2. These actions are:

a. Authorizing and appropriating $16,000,000 for the State share of the cash payment to the Nation.

b. Authorizing and appropriating $9,000,000 for the State share of the economic development funds to be provided to the Nation.

3. The parties agree that, among the other provisions which must be included in the Federal legislation, the Federal Act must include provisions to the effect that:

a. None of the rental payments made to the Nation and none of the income generated thereby shall be subject to taxation in any fashion whatever.

b. Neither the per capita distributions which may be made by the Nation to individual members from rental payment funds, nor any income generated thereby, shall be subject to taxation in any fashion whatever.

c. None of the payments, funds, or distributions authorized, established, or directed by this Agreement, and none of the income derived therefrom, which may be received by the Nation or individual members of the Nation, shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, or seizure in any fashion whatever.

d. None of the payments, funds, or distributions authorized, established, or directed by this Agreement, and none of the income derived therefrom, shall affect the eligibility of the Nation or its members for, or be used as a basis for denying or reducing funds under any government program in any fashion whatever.

D. Effective date

This Agreement shall become effective when all of the following steps have been accomplished. It is contemplated that the steps will be fulfilled in the following order:

1. Approval of the Agreement by the Seneca Nation of Indians and the City of Salamanca;

2. Enactment of the Federal legislation necessary to effectuate the Agreement, and the appropriation of funds sufficient to cover the Federal share of the cash payment to the Nation and the Economic Development Fund.

3. Enactment of State legislation necessary to effectuate the Agreement, and the appropriation of funds sufficient to cover the State share of the cash payment to the nation and the State share of the economic development funds to be provided to the Nation, or an agreement between the Nation and the State concerning the schedule and mechanism for payment to the Nation of the funds described in Section C. 2. above, which shall render this Agreement effective for the period that payments are made as agreed upon by the Nation and the State, and after such payments have been made as agreed upon, thereafter for the term of the new leases described in Section II.B.1. and 2.

E. Land acquisition

The funds appropriated under Section VI.C. above may be used at the Nation's option, to acquire lands to increase the land base of the Seneca Nation, provided that such lands shall be outside of that portion of the City of Salamanca that is within the Allegany Reservation.

F. Modification

After ratification of this Agreement by the Seneca Nation and the City of Salamanca, the parties may modify the Agreement or Documents 2 or 3 only by mutual consent.

VII. LEGAL DISCLAIMER

This Agreement, its accompanying Documents 1-3, and all negotiations and exchanges of technical information leading to this Agreement constitute offers of settlement and compromise of disputed issues entered into between the parties expressly pursuant to Rule 408 of the Federal Rules of Evidence. Accordingly, in the event that the above conditions are not met and this Agreement does not become effective, all statements and agreements contained herein and in Documents 1-3, all technical reports exchanged by the parties, and all negotiations conducted by them are in strict confidence and will not be admissible or used in any way against any of the parties to this Agreement, or the beneficiaries of this Agreement, in any judicial, administrative, or arbitration proceeding.

The parties agree that this Agreement (which includes Documents 1-3 of the Technical Documents), including its execution and implementation (1) shall not foreclose any party from making any contention with respect to the interpretation of the 1875 and 1890 Acts or any claim of being or not being a lessee under these Acts; and (2) shall not be deemed an admission by either party with respect to the interpretation of these Acts, now or in the future.

The legal positions reserved under this Section are not and shall not be construed to be lease terms or provisions of this Agreement relating to lease terms or lease administration, and shall not be subject to presentation to or resolution by the dispute resolution process and arbitration procedures established under Section IV of this Agreement and set forth in Document 3 of the Technical Documents.

VIII. DEFINITIONS

For purposes of this Agreement and unless the context requires a different construction:

1. "Agreement" means this document and, after said documents are finalized, will also include the three documents forming a technical appendix to this document; this document may be executed by the parties before the technical documents are finalized.
2. "City" means the City of Salamanca.
3. "Commission" means the Seneca Nation-City of Salamanca Joint Leasing Commission described in section IV of this Agreement and Document 3 of the Technical Documents.
4. "Equalization Rate" means the percentage of full value at which taxable property in the City of Salamanca is assessed, as determined by the State Board of Equalization and Assessment or as revised by the testing procedure set forth under Section II.B.4. of this Agreement.
5. "Council" means the Council of the Seneca Nation of Indians.
6. "Land value" means the value of the land, exclusive of improvements, provided that the use of this term in calculating the annual rental payment shall not effect the Nation's claim for improvements on the leased lands, which claim is preserved under Section VII of this Agreement. The land value for each parcel which is under lease shall be as determined by the objective reappraisals provided for under Section II.B.3. and 4. of this Agreement, provided that until the reappraisal to be completed by the end of the fifth year of the initial forty year term of the leases provided for under this Agreement, the land value for each parcel shall be determined by the Equalization Rate applied to the assessed land value for each parcel.
7. "Lessee" means a lessee or sublessee under a lease entered into pursuant to this agreement.
8. "Nation" means the Seneca Nation of Indians.
9. "Non-residential" means all types of property except that which is residential.
10. "Residential" means one, two, three, and four-family residences, except cooperatives and condominiums.
11. "Technical Documents" means the three documents which comprise the technical appendix to this Agreement.

SENECA NATION OF INDIANS,
(By) ——— ———,
President.

Date: July 13, 1990.

CITY OF SALAMANCA,
(By) ANTONIO N. CARBONE,
Mayor.

Date: July 12, 1990.

DOCUMENT 3: SENECA NATION—CITY OF SALAMANCA JOINT LEASING COMMISSION

INTRODUCTION

This document accompanies and is an integral part of the Agreement between the Seneca Nation of Indians and the City of Salamanca ("Agreement"). This document describes the composition, powers, and responsibilities of an administrative body established to compute rent under the leases, and perform other administrative functions, and establishes an arbitration procedure to resolve issues that may arise under the leases.

A. Commission established

There is hereby established the Seneca Nation-City of Salamanca Joint Leasing Commission [hereinafter referred to as the Commission], which shall exercise powers and responsibilities as set forth in this Document.

B. Membership

1. The Commission shall consist of five members. Two members shall be appointed by the Council of the City of Salamanca [hereinafter referred to as the City]. The compensation and expenses of the City's members shall be paid by the City. Two members shall be appointed by the Council of the Seneca Nation of Indians [hereinafter referred to as the Nation]. The compensation and expenses of the Nation's members shall be paid by the Nation. The fifth member shall be selected by agreement of the other four members. The compensation and expenses of that member and all other expenses of the Commission shall be shared equally by the City and the Nation. Each member duly appointed or selected shall hold office for a term of six years, and for so long thereafter until a successor shall be appointed or selected, unless earlier removed. The initial terms of each member shall be staggered, with one member serving a six-year term, one a five-year term, one a four-year term, one a three-year term, and one a two-year term. The initial term of each member shall be chosen by lot, or by any other procedure agreed upon in writing by the first five members of the Commission.

2. Should the four appointed members fail to agree within sixty days of the effective date of this Document or within thirty days after any vacancy occurs, on the selection of the fifth member, the following procedure shall be utilized:

(a) Within five days the City appointees shall nominate no more than five and no fewer than three persons to serve as a member of the Commission and the Nation appointees also shall nominate no more than five and no fewer than three persons to serve as a member of the Commission.

(b) Within fifteen days thereafter the City appointees shall reject all but one of the persons nominated by the Nation appointees and the Nation appointees shall reject all but one of the persons nominated by the City appointees.

(c) The American Arbitration Association shall select the fifth member of the Commission from the remaining two nominees.

3. The removal of the members of the Commission appointed by the Nation shall be governed by and subject to the laws of the Nation. The removal of members of the Commission appointed by the City shall be governed by and subject to the laws of the City.

4. Vacancies on the Commission shall be filled by appointment of a person to serve the unexpired term of the member whose seat has become vacant. If a City appointee becomes unable or unwilling to serve on the Commission or is removed by the City, the Council of the City of Salamanca shall make the appointment within thirty days. If a Nation appontee becomes unable or unwilling to serve on the Commission or is removed by the Nation, the Council of the Seneca Nation shall make the appointment within thirty days. If the fifth member of the Commission becomes unable or unwilling to serve on the Commission, the remaining members shall fill the vacancy under the procedures set forth in paragraphs 1 and 2 of this section.

C. Quorum and vote required

Three members of the Commission shall constitute a quorum if reasonable notice has been provided in advance to the absent members. Meetings may be in person or, in appropriate circumstances, by telephone. All meetings of the Commission shall be held on the Allegany Reservation. All acts of the Commission shall be by a majority of the Commission, shall be in writing and, shall be delivered to the Nation, the City, and such other persons or entities as the Commission may designate.

D. Authority of the Commission

1. The Commission is authorized and directed:

(a) to compute the annual rental payment due for the leases in accordance with Section II.B.3. of the Agreement (hereafter the "annual rental payment") and to apportion the annual rental payment between the lessees collectively and the City of Salamanca in accordance with Section II.B.5. of the Agreement. The City shall make available to the Commission by December 1 of each year all records, figures, and dates within its possession necessary to make the required computation;

(b) to notify the City annually by December 15 of each year of the share of the annual rental payment collectively owed by the lessees, and of the share of the annual rental payment owed by the City in accordance with Section II.B.5. of the Agreement. The amounts so determined and provided to the City shall be certified to the City by the Commission, and unless disputed by the City within 10 days, shall constitute the annual rental payment and the apportionment thereof between the lessees collectively and the city;

(c) to verify and confirm annually the amount of the annual rental payment which each individual lessee will pay pursuant to the procedures used by the City to determine said amount, which procedures shall be provided to the Commission at least 60 days before February 19 of each year. The Commission shall certify such amounts to the City, and the City shall then pro-

ceed to notify the lessees individually and to collect said amounts from the lessees individually under procedures approved by the Commission; and

(d) to perform other administrative tasks necessary for administration of the leases, provided that the Commission shall have no authority to exempt any lessee from his or her share of the annual rental payment.

2. The Commission is authorized:

(a) to adopt rules and regulations to govern its procedures and to carry out its responsibilities under this Document and the Agreement. Such rules and regulations must be consistent with all provisions of the Agreement, this Document, and all federal legislation. All records of the Commission shall be open to public inspection except for privileged information;

(b) to employ or seek assistance of such clerical or other personnel and establish such offices as it deems necessary for the performance of its functions according to the Agreement and this Document. Pending the establishment of a principal office, the Commission's office shall be located at such location convenient to the Commission and the parties as the Commission may designate; and

(c) To submit an annual budget, which shall be subject to approval by the City and the Nation. The Nation and the City shall each provide fifty percent of the funds budgeted for the operations of the Commission.

E. Dispute resolution; arbitration

1. The Nation, the City and the lessees shall attempt to resolve any dispute that arises under the lease terms or under provisions in the Agreement relating to lease terms or lease administration by good faith negotiations. The Commission may mediate such disputes if authorized to do so by the rules and regulations adopted pursuant to Section D.2 (a) of this Document.

2. If after 15 days of negotiations, and at the end of such period of time as the Commission may establish for mediation, a dispute remains, the Nation, the City or any individual lessee who believes that any other of these persons or entities has failed to comply fully with any lease term or any provision in the Agreement relating to lease terms or lease administration, may file a complaint with the Commission initiating binding arbitration under the procedures set forth in this Section. The arbitration panel selected shall have exclusive jurisdiction to resolve, through a process of binding arbitration, any and all disputes and issues arising under the lease terms or under provisions in the Agreement relating to lease terms or lease administration, which arbitration shall be the exclusive means of resolving such disputes, provided that the legal positions reserved under Section VII of the Agreement shall not be subject to arbitration. Matters subject to arbitration shall include but are not limited to all disputes concerning rental payments, and all disputes concerning compliance with the terms set out in Document 2 of the Technical Documents, provided, however, that if the Nation receives from the City the total annual rental payment, then the Nation shall have no recourse against any individual lessee for failure to make rental payments, and in such case, the

City shall have the exclusive right to seek redress from any defaulting lessee. However, if the City does not pay the lessees' full share, then the Nation may seek redress against the City, any defaulting lessees, or both.

3. Arbitration initiated under this section shall take place under the following procedures. A panel of arbitrators consisting of three members shall be appointed. One member shall be appointed by the Nation and one member shall be appointed by the person or entity filing the arbitration complaint ("complainant"), or if the Nation files the complaint, by the person or entity against whom the complaint is filed ("respondent"), each to be appointed within five days of the filing of the complaint initiating arbitration. The third member shall be selected by agreement of the other two members. In the event the two members cannot agree upon the third arbitrator within ten days, the third arbitrator shall be chosen by the American Arbitration Association. The compensation and expenses of the Nation's appointee shall be paid by the Nation. The compensation and expenses of the complainant's or respondent's appointee, as the case may be, shall be paid by the complainant or respondent. The compensation and expenses of the third arbitrator and all other expenses of arbitration shall be shared equally by the Nation and the complainant or respondent. The City shall have the right to intervene as a party in all arbitration proceedings in which the lessee is the complainant or respondent.

4. Meetings of arbitrators may be in person or, in appropriate circumstances, by telephone. The arbitration panel may consolidate proceedings presenting similar issues on motion of any party, or on its own motion. All decisions of the arbitration panel, shall be by majority vote, in writing and, together with any dissenting opinions, shall be delivered to all parties to the arbitration proceeding and to the parties to this Agreement.

5. The arbitration panel shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence.

6. The arbitration panel shall hold hearings in proceedings before it and shall give advance notice to the Seneca Nation, the City of Salamanca, and all parties to any proceeding, personally or by certified mail return receipt requested no fewer than five days before any hearing. Appearance at a hearing waives such notice. The arbitration panel may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Nation, the City, and all parties to the proceeding are entitled to be heard, to present evidence material to the controversy, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at their own expense. The arbitration panel shall decide matters submitted to it within sixty days of the date on which the matter is deemed under submission by the Commission.

F. Review and enforcement of arbitration decisions

1. Decisions of the arbitration panel shall be effective immediately, unless stayed for a period of time prescribed by the arbitration panel. On application of a party within a reasonable time, but in

any event no more than ninety days after a decision is rendered, the arbitration panel may modify or correct any decision, and may make such modification or correction retroactive to the date of the initial decision:

(a) where there was an evident material miscalculation of the figures or any evident material mistake in the description of any person, thing or property referred to in the decision;

(b) where the decision is imperfect in a matter of form not affecting the merits of the controversy; or

(c) where the decision requires clarification.

2. Any party to the arbitration proceeding may, within ten days of any final decision, apply to the arbitration panel to modify or set aside any aspect of the decision. Notice of such application shall be served personally or by certified mail return receipt requested upon all parties to the proceeding, the Clerk of the Seneca Nation, and the Clerk of the Council of the City of Salamanca. Any other party shall have ten days within which to respond to the application. The arbitration panel shall act on such application within ten days after a response is filed or, if no response is filed, within fifteen days after the application is filed. If the arbitration panel fails to act within the time limitations set forth in this paragraph, the application shall be deemed denied. The time for appeal provided in paragraph 3 of this section shall not begin to run until the application is determined as provided in this paragraph.

3. Any party before the arbitration panel may seek review of any final decision by the arbitration panel only in the United States District Court for the Western District of New York. Such an appeal must be filed within thirty days of such decision. The notice of appeal shall be filed with the Court and served personally or by certified mail return receipt requested upon the Clerk of the Nation, the Clerk of the Council of the City, the arbitration panel, and all parties to the arbitration proceeding, and all such persons and entities shall thereafter have the right to participate in the appeal.

4. In any appeal, the arbitration panel's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:

(a) the decision was procured by corruption, fraud or undue means;

(b) there was evident partiality or corrupton by the arbitration panel, or by any member;

(c) the arbitration panel was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;

(d) the arbitration panel exceeded its authority under the terms of this Document; or

(e) the decision is arbitrary and capricious or contrary to law.

5. Unless an appeal is timely filed as provided in paragraph 3 of this section, any decision of the arbitration panel shall be confirmed or enforced by the United States District Court for the Western District of New York, on petition of the Nation, the City,

or any party to the arbitration proceeding in which the decision was made.

6. When a timely appeal is filed pursuant to paragraph 3 of this section, or a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, the United States District Court for the Western District of New York may order such temporary or permanent relief as it considers just and proper.

7. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, in the manner and to the same extent as from orders or judgments of the Court in a civil action.

8. In any appeal or petition to confirm or enforce the arbitration panel's decision, the arbitration panel shall promptly file with the Court the record of the arbitration proceedings.

SENECA NATION OF INDIANS,
(By) ——— ———,
President.

Date: July 13, 1990.

CITY OF SALAMANCA,
(By) ANTONIO N. CARBONE,
Mayor.

Date: July 12, 1990.

It is the opinion of the Committee that the trust obligation of the United States in connection with this Agreement and the annexed Documents is fully met.

Settlement funds

S. 2895 provides for a payment by the United States to the Seneca Nation of $35 million, and a payment by the State of New York to the Seneca Nation of $25 million—a grand total of $60 million. These funds are intended to compensate the Seneca Nation for the losses it has sustained during the lease period.

Witnesses for the Seneca Nation provided the Committee with a report prepared by Professor Joseph Stiglitz, an economist from Stanford University, whose most conservative estimate of the losses sustained by the Seneca Nation was $262 million. Professor Stiglitz first calculated a land value for the land under lease, using values for comparable land in surrounding communities. He calculated land value as 10 percent of total value, a conservative procedure as land value ranges between 10 and 30 percent of total value. He then constructed a land value index for New York agricultural land, which enabled him to arrive at a land value for each year back to 1892 by deflating the current value by the amount of the index. From this, Professor Stiglitz determined the shortfall in lease income received by the Nation over the years, adding the income the Nation could have generated from the lease shortfall using the government bond rate. This yields the figure of $262 million. This figure does not include shortfalls in lease income from leases in the congressional villages.

Using a more conservative model and a shorter time frame, figures were prepared for Congressman Houghton's office that estimated the lease income losses of the Seneca Nation at $50 million.

This figure was calculated on the basis of income loss from 1952 through 1990 and used the more conservative interest rate of 5 percent simple interest (the rate generally used by the Indian Claims Commission) instead of the government bond rate. The year 1952 was used because that is the date the Seneca Nation filed a claim in the Indian Claims Commission—a claim which included a claim for "use of improper lease fees". This claim is referenced in section 2(a) of this bill. The cut-off date for that claim was actually 1946. Following this more conservative model, the estimated loss of lease income would be $52.5 million. This figure also does not include loss of income from shortfalls in rental income from the congressional villages.

Section 2(b)(8) of this bill refers to the "potential liability" on the part of the United States that could be a consequence of not reaching a settlement with the Seneca Nation. Mr. Walter R. Mills, Deputy to the Assistant Secretary—Indian Affairs, Department of the Interior, did not deny this potential liability but stated in his prepared testimony that the liability of the Government "is not clear". Given the past history of this case, it is the opinion of the Committee that the $60 million which is to be paid to the Seneca Nation by the United States and the State of New York is a fair and equitable compensation for the losses sustained by the Seneca Nation.

Division of Federal-State contributions

It is clear from the history of these Seneca leases and testimony presented to the Committee that the United States bears a direct responsibility for the lease terms that were imposed on the Seneca Nation. The Act of 1875 ratified and confirmed leases that had already been declared null and void by the courts of New York, and extended those leases for a period of twelve years. The Act of 1890 authorized the extension of those leases for an additional term of 99 years, subject to the same terms and conditions as the Act of 1875.

It is equally clear that the State of New York bears a significant responsibility. It was the State that originally authorized the leasing within the Allegany Reservation, and then sought Federal legislation to either extinguish Indian title to the land or confirm long term leases.

There is no scientific formula to determine the relative division of responsibility between the United States and the State of New York. It is the opinion of the Committee in this case that the comparative contributions of the United States and the State of New York is fair and equitable.

Lease terms and trust responsibility

Unlike the Acts of 1875 and 1890, the Seneca Nation has actively sought and supported this legislation. Unlike the leases imposed on the Seneca Nation by the Act of 1875 and extended by the Act of 1890, the lease rental terms offered by the Seneca Nation to the current lessees are based on a percentage of land value as appraised from time to time pursuant to the Agreement with the city of Salamanca. Under the Agreement, the Seneca Nation will play a strong and continuing role in administration of the leases, the

Nation is empowered to seek reappraisal of the lands whenever the Nation deems it necessary and appropriate, and a mechanism for dispute resolution which was sought by the Nation is built into the Agreement.

The potential liability of the United States for the leases under the 1875 and 1890 Acts springs from the fact the lease terms were unfair and inequitable at the time the leases were ratified by the Congress and that no escalation or capacity for renegotiation was included within the leases or the legislation. By virtue of the Acts of Congress, the Seneca Nation was denied the capacity to assist itself. The damages that accrued to the Seneca Nation were and are a direct consequence of the shortfalls in the lease income over the period of 100 years or more, imposed on the Nation by the 1875 and 1890 Acts. While disclaiming any admission of liability on the part of the United States, the potential of an adverse finding on the issue of liability for these shortfalls in lease income prior to 1946 was implicitly acknowledged by the United States in its compromise settlement of the claims of the Seneca Nation in Docket No. 342–G before the Indian Claims Commission in 1977 (39 Ind. Cl. Comm. 355).

It is the opinion of the Committee that the terms of the leases that will now voluntarily be offered by the Seneca Nation to the lessees of the City of Salamanca and the congressional villages coupled with the Agreement providing for periodic reappraisals and establishing the capacity of the Nation to participate in the lease administration does, in fact, meet the trust responsibility owed by the United States to the Seneca Nation and will not result in any liability on the part of the United States in future years.

LEGISLATIVE HISTORY

S. 2895 was introduced by Senator Moynihan (for himself and Senator D'Amato) on July 24, 1990, and was referred to the Select Committee on Indian Affairs for consideration. A companion bill, H.R. 5367, was introduced in the House of Representatives by Representative Amo Houghton of New York on July 25, 1990, which was referred to the House Committee on Interior and Insular Affairs.

On September 12, 1990, the House Committee on Interior and Insular Affairs held a hearing on H.R. 5367, and on September 18, 1990, the Select Committee on Indian Affairs held a hearing on S. 2895.

On September 25, 1990, the Select Committee on Indian Affairs, in an open business meeting, adopted an amendment in the nature of a substitute for S. 2895, and ordered the bill reported with a recommendation that the bill, as amended, do pass. The House Committee on Interior and Insular Affairs adopted a similar amendment at a business meeting on September 26, 1990, and ordered H.R. 5367 reported with a recommendation that the bill, as amended, do pass.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 25, 1990, by unanimous vote and without objection, the Select Committee on Indian Affairs, in an open business

session, adopted an amendment in the nature of a substitute to S. 2895 and ordered the bill reported with a recommendation that the bill, as amended, do pass.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act may be cited as the "Seneca Nation Settlement Act of 1990".

Section 2. Findings and purpose

Subsection (a) contains brief congressional findings relating to the history of the 99 year lease of lands of the Seneca Nation of New York upon which the major portion of the city of Salamanca and certain small villages are located; the problems and controversy created by the impending expiration of such leases on February 19, 1991; the losses suffer by the tribe from inadequate rentals during the lease term; and the responsibility of the Federal and State government in securing a settlement of the issues.

Subsection (b) sets out the purpose of the Act as being to ratify an agreement between the Seneca Nation and the city, and facilitate the negotiation of new leases with village lessees, to compensate the tribe for past inequities; provide stability to the city and villages through the renegotiation of leases; promote economic growth of the city, villages, and the tribe; and avoid potential legal liability of the United States.

Section 3. Definitions

Section 3 contains definitions of various terms used in the bill including "Agreement" as being the agreement between the Seneca Nation of Indians and the city of Salamanca and "memorandum of understanding" as being an agreement between the Seneca Nation and the State of New York as to the payment of funds to be provided under the Act.

Section 4. New leases and extinguishment of claims

Subsection (a) provides that the Act shall apply to the Sceneca Nation if it offers new leases to existing lessees according to the Agreement and if it certifies that it has provided written copies of such offers to the Secretary of the Interior.

Subsection (b) requires the Sceneca Nation to execute appropriate documents relinquishing all claims it may have against the United States, the State of New York, the city and villages, and prior lessees for payment of annual rents prior to February 20, 1991, with respect to all prior or existing leases.

Subsection (c)(1) provides that the relinquishment of claims against the United States shall be effective upon payment by the United States to the Seneca Nation of the funds provided in section 6.

Subsection (c)(2) provides that the tribal offers for new leases pursuant to subsection (a) and the tribal release of claims against the State, the city, the congressional villages, and all prior lessees for payment of annual rents referred to in subsection (b) shall not be effective until the later of the dates upon which the United

States and the State of New York appropriate the funds required by section 6 or the State has agreed to a schedule and mechanism for meeting its obligations under section 6(c). It further provides that the offers, acceptances and relinquishments under subsection (a) and (b) shall be effective only so long as the State meets its obligations under such agreement.

Section 5. Responsibilities and restrictions

Subsection (a) makes a congressional finding that the Seneca Nation is solely responsible for negotiations of leases under the Agreement and approval of the United States of such leases is not required.

Subsection (b) states that Congress finds that the lessees are responsible for representing their own interests in lease negotiations with the Nation and that nothing in the Act shall be construed to prevent such lessees from collectively negotiating, formally or informally.

Subsection (c) reiterates that the United States shall not have authority to approve leases of the Seneca Nation and that Federal funds may not, in any way, be obligated or expended to make rental payments under such lease, except for funds which might be available under a general Federal program for such purposes.

Subsection (d) makes similar provision for the lack of State authority to approve such leases and similarly restricts the use of State funds for rental payments.

Section 6. Settlement funds

Subsection (a) requires that the United States and the State shall provide the settlement funds and that the Secretary may not obligate or expend funds provided under subsection (b) until the Secretary determines that a memorandum of understanding between the Seneca Nation and the State of New York for payment of the state share has been agreed to and signed.

Subsection (b), paragraph (1), provides that the Secretary shall pay to the Seneca Nation $30,000,000 as a cash settlement, such sums to managed, invested and used by the Nation to further specific objectives of the Nation and its members, all as determined by the Nation in accordance with the constitution and laws of the Nation. It is the intent of the Committee that these funds be managed by the Nation in accordance with procedures now followed by the Nation, including annual audits, and that the use and distribution of the funds, particularly in the matter of per capita distribution, adhere to the plan outlined in the Supplemental State of Dennis Lay, President of the Seneca Nation, submitted for the Committee hearing record.

Paragraph (2), subparagraph (A), provides that, in addition, the Secretary shall pay to the Nation $5,000,000 for economic and community development of the Nation and the City of Salamanca pursuant to the provisions of subparagraph (B).

Subparagraph (B), clause (i), provides that $2,000,000 of the $5,000,000 shall be deposited in an interest bearing account of the Seneca Nation. The account is to be administered, and the principal and interest disbursed, according to an economic and community development plan adopted by the Council of the Nation. Until

all the principal is expended, accrued income can be used, on a quarterly basis, for tribal government operation and to provide for the general welfare of the tribe and its members. It also permits the tribe to add accrued income to the principal.

Clause (ii) provides for the establishment of a Seneca Nation escrow account with the remaining $3,000,000, the accrued income on which is to be used, for period of ten years or until certain payments have been made as provided in section V.D. of the Agreement, for economic and community development activities for the benefit of the City of Salamanca. At the end of the ten-year period, the $3,000,000 principal is to be disbursed in accordance with a Seneca Nation Council plan for economic and community development of the Nation.

Subsection (c) provides that the State of New York shall provide $16,000,000 in cash payments and $9,000,000 in economic community development services pursuant to the memorandum of understanding as its share of the settlement.

Subsection (d) provides that the payments required of the United States shall be made within 30 days after the Secretary determines that the tribe has complied with section 4, or as soon thereafter as such funds become available. If it is determined that the tribe has not complied with section 4, the Secretary shall advise the tribe in writing of steps it must take to comply.

Subsection (e) provides that the only amounts available to carry out this Act shall be those specifically appropriated for that purpose by the United States or the State of New York.

Section 7. Conditions precedent to payment of United States and State funds

Section 7 provides that none of the funds appropriated to compensate the tribe pursuant to this Act may be expended until the tribe has executed new leases with all the lessees who accept the tribe's offer under section 4(a) and the tribe has executed the documents of relinquishment of claims as required by section 4(b).

Section 8. Miscellaneous provisions

Subsection (a) provides that, subject to subsection (b), the provisions of section 7 of the Indian Tribal Judgment Use and Distribution Act shall apply to payment of funds under this Act to the tribe and individual members. In addition, it provides that none of the funds distributed by the Act, and none of the income derived therefrom, which are to be received by the tribe or its members shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, seizure, or State or local taxation.

Subsection (b) provides that none of the funds distributed under the Act, and none of the income derived therefrom shall affect the eligibility of the tribe or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

Subsection (c) provides that land within the aboriginal area in the State of New York or land situated within or in near proximity to former reservation land may be acquired by the Seneca Nation with funds appropriated pursuant to this Act. The Committee notes that nearly one-third of the Seneca Nation's Allegany Reservation

was lost through construction of the Kinzua Dam project in the mid-1960's.

This subsection further provides that state and local governments shall have a period of 30 days after notification by the Secretary or the Seneca Nation of acquisition or intent to acquire such lands to comment on the impact of the removal of such lands from the real property tax rolls of state political subdivisions. Unless, within 30 days after the comment period, the Secretary determines that such lands should not be subject to the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177), such lands shall be held in restricted fee status subject to the provisions of that Act. It also provides that lands so acquired can be added to, and used to expand the boundaries of, the Allegany, Cattaraugus, or Oil Spring reservations of the Seneca Nation, depending on the proximity of such lands to such reservations.

Section 9. Limitation of action

Section 9 provides that any action contesting the constitutionality of this Act shall be barred unless filed within 180 days after the date of enactment and that exclusive jurisdiction over such action shall be conferred upon the United States District Court for the Western District of New York.

Section 10. Authorization of appropriations

Section 10 authorizes the appropriation of such funds as are necessary to carry out the Act.

COST AND BUDGETARY CONSIDERATIONS

The cost and budgetary impact of S. 2895, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2895, the Seneca Nation Settlement Act of 1990, as ordered reported by the Senate Select Committee on Indian Affairs on September 25, 1990. CBO estimates that enactment of this bill would result in outlays of $35 million in fiscal year 1991, assuming appropriation of the authorized sums.

Cost to the Federal Government

S. 2895 would provide for the renegotiation of leases held by the Seneca Nation and adoption of a settlement package to compensate the Nation for losses from past leases. The Nation currently holds about 3,300 99-year leases within the City of Salamanca, New York—leases that were established at very low rates by an act of Congress and which expire in February 1991. This bill would authorize the appropriation of $30 million in federal funds to compensate the tribe for losses on existing leases and $5 million for community and economic development. The Nation would be required

to negotiate new leases with leaseholders and to relinquish claims against the federal government.

Cost to State and local governments

S. 2895 would require that the State of New York pay $25 million to the Seneca Nation, $16 million as a cash payment, and $9 million for community and economic development. These payments would be subject to a memorandum of understanding to be agreed to by the state and the Seneca Nation. The bill also provides that any land subsequently acquired by the tribe may be held in restricted fee status or become part of the Nation's reservation land. If the Nation buys additional land, this could result in loss of property tax revenue to local governments, since the land would become nontaxable. The Nation currently has no plans to purchase large amounts of taxable land, and we estimate that these costs would not be significant.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2895 will have a minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The only communication received from the Executive Branch on S. 2895 was in the form of testimony from witnesses for the Department of the Interior. The prepared statement of Walter R. Mills, Deputy to the Assistant Secretary—Indian Affairs, Department of the Interior follows:

STATEMENT OF WALTER R. MILLS, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman, and members of the Committee. I am pleased to be here to present the views of the Department on S. 2895, the "Seneca Nation Settlement Act of 1990".

S. 2895 seeks to address past inequities, to extinguish all prior claims of the Seneca Nation by making it whole, and to allow lease renewals. I want to commend the Seneca Nation, the City of Salamanca, and members of the New York Congressional delegation for their efforts to develop a consenus solution to the leasing of Seneca lands. While we support efforts to resolve the issues between the Seneca Nation and the City of Salamanca, New York, the Administration strongly opposes S. 2895.

Section 2 of the Act of February 19, 1875 (18 Stat. 330) authorized the leasing of certain Seneca lands within the Allegany Reservation, and an 1890 amendment to the 1875 Act (26 Stat. 558) provided that such leases could be renewed for a 99 year term.

Approximately 2,500 99-year leases of Seneca lands within the villages established under the 1875 act (primarily within the City of Salamanca, New York) will expire in February 1991. Each of the leases provides for an annual payment of three dollars or less, and lump-sum payments are now being made by the City directly to the Tribe, pursuant to the Act of August 14, 1950 (64 Stat. 442).

The purpose of the proposed Act appears to be to settle past inequities effected against the Seneca Nation resulting from the 99-year leases approved by Congress pursuant to the 1875 Act. Absent legislation, the lessor Seneca Nation and the non-Indian lessees will have to go to arbitration to try and reach an agreement for further leasing. The Seneca Nation could rightfully demand fair market rental value, and the arbitrator could not fairly allow anything less. However, due to a depressed economy in the Salamanca area, it is not expected that many of the lessees could afford to pay fair market rental.

The Administration strongly opposes S. 2895 for the following reasons:

(1) First and most fundamentally, the United States is being asked to commit $35 million as compensation to the Seneca Nation for a lease arrangement approved 100 years ago by an Act of Congress.

(2) It is not clear that the Federal government is liable under the terms of the lease arrangement. S. 2895 incorrectly states the Federal government is potentially liable for its action in this matter.

(3) There is no justification for how the $60 million in compensation was derived or the basis for the amount of the contributions by the United States and the State of New York.

(4) S. 2895 fails to adequately address the market sensitivity of future lease payments between the Seneca Nation and individual lessees. This approach could only contribute to problems in the future.

(5) The Executive Branch was not a party to the negotiations and cannot be expected to support a settlement that requires the commitment of significant federal funds. This could set an adverse precedent for addressing other Indian issues.

At the outset it should be understood that it is not clear whether the United States could be held legally liable for the low rental rates for the use of tribal property. Section 2(b)(8) of the bill incorrectly states that the U.S. risks liability if S. 2895 is not enacted.

Section 2(a)(3) makes reference to an analysis of historic land values which indicates that the Nation was paid rental that was "well below the actual lease value of the

property." We are, of course, aware of the Stiglitz Report which the Nation submitted to Mr. Houghton on October 25, 1989. Professor Stiglitz provided an abundance of figures with regard to rental values. The Department has always sought to establish some concrete basis for payment such as rental or sale value per acre at a given time in order to reach a total figure for a land claims settlement. Here, we find none. This should be clarified for the record.

In addition, the bill does not establish the basis upon which the proportionate financial burdens of responsibility have been divided between the United States and New York.

We are also confused over the language of section 2(a)(2)(E) which states that the Seneca Nation filed a claim against the United States "for use of improper lease fees. . . ." We are unclear as to the purpose of this subsection. We recommend that this subsection be deleted or reworded for the sake of clarity.

Finally, S. 2895 does not provide for a conclusive settlement of the issues between the Seneca Nation and the City of Salamanca, New York. For example, the bill does not address the ownership of improvements at Salamanca.

This concludes my prepared testimony, and I will be happy to respond to any questions the Committee might have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 2895 will not result in any changes in existing law.

○